

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SECOND APPEAL No 489 of 1978

with

SECOND APPEAL No 490 of 1978

Hon'ble MR.JUSTICE Y.B.BHATT

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

RABARI NATHABHAI RAGHABHAI

Versus

RABARI MADHABHAI RAGHABHAI

Appearance:

1. Second Appeal No. 489 of 1978
MR VC DESAI for Appellants
MR KN VALIKARIMWALA for Respondent
 2. Second Appeal No 490 of 1978
MR VC DESAI for Appellants
MR KN VALIKARIMWALA for Respondent
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CORAM : MR.JUSTICE Y.B.BHATT

Date of decision: 08/01/97

ORAL JUDGEMENT

1. These are Second Appeals under section 100 CPC.

Both the appeals are dealt with by the present common judgement inasmuch as they arise from cross suits and cross appeals in the lower court.

2. The pertinent facts in brief are as under:

2.1 The appellants in Second Appeal No.489/78 had filed as plaintiffs Civil Suit No.143/73 against the respondent-defendants for a permanent injunction seeking to restrain the defendants from obstructing the plaintiffs in the enjoyment, possession and cultivation of the lands in dispute. The trial court decreed the suit. The defendants then preferred Regular Civil Appeal No.26/76, wherein the lower appellate court reappreciated the evidence on record, allowed the appeal and dismissed the suit.

2.2 On the other hand, the Second Appeal No.490/78 arises from Civil Suit No.145/73 wherein the respondents as plaintiffs had filed suit, again seeking a relief of permanent injunction restraining the defendants (of that suit) from entering into the suit field and obstructing the plaintiffs (of that suit) from cultivating the same. The trial court dismissed that suit. The said dismissal was challenged by the plaintiffs (of that suit) by filing Regular Civil Appeal No.27/76, wherein the lower appellate court reappreciated the evidence on record, allowed the appeal and decreed the suit in favour of the plaintiffs of the said suit. Thus, Second Appeal No.490/78 is filed by the defendants of the said suit.

3. It is thus seen that both the present Second Appeals arise from cross suits where the parties are essentially the same.

4. The suit property in respect of which the dispute arises is Survey No.12, situated in village Muloj-Dungri, Taluka Modasa, District Sabarkanta, admeasuring 11 acres, 35 gunthas i.e. about 20 Vighas. The said land was purchased on 13th June 1959 by Rabari Madhabhai Raghabhai from Devchand Purichand for a consideration of Rs.10,000/- under Sale Deed Exh.22.

5. The case of the appellants in Second Appeal No.489/78 (plaintiffs of Regular Civil Suit No.143/73) was that the land was purchased in the name of Madhabhai Raghabhai simply because he was the eldest brother in the family, whereas the consideration for the purchase was paid from the joint family funds.

6. On the part of these plaintiffs (who, in

substance do not accept the sale deed Exh.22 in favour of Madhabhai Raghabhai), the evidence led consists of the deposition of Nathabhai (Exh.42), Laxman Bhala (Exh.46), Kodar Rama (Exh.48) and Amratbhai (Ex.53). On the other hand, the evidence on behalf of the defendants i.e. respondent in Second Appeal No.489/78 and respondents in Second Appeal No.490/78 consists of the oral deposition of Madhabhai Raghabhai at Exh.61 who is the owner of the disputed property in the revenue records, supported by the oral deposition of the vendor Devchand Purichand at Exh.59, and who proves the sale deed in favour of Madhabhai Raghabhai at Exh.22.

7. At this stage it must be noted that in both the cross suits, the relief sought by the concerned plaintiffs was to restrain the concerned defendants from interfering with the possession of the concerned plaintiffs, and to restrain the concerned defendants from preventing the concerned plaintiffs from cultivating the suit lands. It is relevant to note in this context that in neither of the suits have the plaintiffs prayed for a declaration of title or any declaration in respect of the sale deed Exh.22 which admittedly conveys the suit land in favour of Madhabhai Raghabhai.

8. Under the circumstances and in view of these pleadings the lower appellate court could not be faulted in any manner whatsoever, in first dealing with the question of title to the suit land (although no declaration in respect thereof had been sought) and then examining the relevant evidence to ascertain which of the two sides was in possession and in cultivation thereof.

9. On a total consideration of the evidence on record the lower appellate court has found on facts, and has recorded the consequential findings of fact, that the appellants in Second Appeal No.489/78 (plaintiffs of Regular Civil Suit No.143/73) have failed to establish that they were in possession of the disputed property or that they were cultivating the same (whether on behalf of Madhabhai Raghabhai or otherwise, and/or whether they were cultivating a part of the disputed property). On the contrary, the lower appellate court accepted the evidence on behalf of the plaintiffs of Civil Suit No.145/73 i.e. respondents in Second Appeal No.490/78, and fully accepted the deposition of Madhabhai Raghabhai at Exh.61, and recorded findings of fact to the effect that the brothers had been separate in property and residence since about 36 years, all the brothers had separate lands and houses, and that Madhabhai Raghabhai had purchased the disputed land from his personal funds.

Furthermore, the original vendor of the suit land Devabhai Purichand at Exh.59, who has also proved the sale deed at Exh.22, is found to have fully supported the case of Madhabhai Raghabhai, even to the extent of asserting that the funds which constituted the sale consideration were the personal funds of Madhabhai Raghabhai.

10. The lower appellate court was also completely justified in relying upon Section 90 of the Evidence Act, and holding that no oral evidence contrary to, and/or led with a view to contradict the averments made in a document in writing, which is required by law to be in writing, can be permitted to be led, or can be relied upon, for the purpose of contradicting the statements made in such document.

12. From a conspectus of the evidence on record and the treatment and appreciation thereof by the lower appellate court, it is obvious that essentially the impugned judgement and decrees are based upon appreciation of evidence and the consequential findings of fact, and no substantial question of law can be made out in the present Second Appeals, merely by urging that the question of interpretation of the deed of title (sale deed at Exh.22) is in itself a question of law.

13. The scope of section 100 CPC, and the powers of the High Court while exercising jurisdiction as a second appellate court are by now well defined and require no detailed discussion. The Supreme Court has, in the case of Ramaswamy Kalingaryar Vs. Mathayan Padayachi (AIR 1992 Supp (1) SCC page 712), and in the case of Parsini (dead) through Legal Representatives Vs. Atma Ram (AIR 1996 SC 1558), clearly reiterated the principle that the High Court cannot, while functioning as a second appellate court under section 100 CPC, upset the findings of fact recorded by the lower appellate court by reassessing the evidence, or reassess the qualitative value of such evidence on record, and thus cannot reverse such findings of fact. In fact, the High Court cannot interfere with such findings of fact even by examining or reappreciating the evidence from the aspect of "sufficiency of proof".

14. As discussed hereinabove, the present appeals do not involve any substantial question of law within the meaning of section 100 CPC. These appeals are, therefore, dismissed with no order as to costs.
